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OFFICE OF PUBLIC INSTRUCTION

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Linda McCulloch  
Superintendent

May 16, 2006

Carter Christiansen, Director  
Big Country Cooperative  
PO Box 668  
Miles City, Montana 59301

Dear Mr. Christiansen:

The Division of Special Education is currently reviewing all Special Education Cooperative interlocal agreements to ensure that all agreements are in compliance with state regulations regarding the establishment and activities of a cooperative. After our review, we are providing suggestions for recommended changes and/or statements of required changes to comply with state regulations.

Following a recent review of the agreement, it has been determined that the current agreement is not consistent with state administrative rules. The following are required changes necessary to bring the interlocal agreement into compliance with state law and administrative rules:

**Required Changes**

*Duration of Cooperative and District Membership Commitment*

There is an inconsistency in the statement regarding the duration of the cooperative's existence that should be addressed. The opening sentence on page 2 states that the agreement, dated January 2003, is to remain in effect for 3 years. However, on page 4, under Cooperative Organization, statement #2 reads that the "duration of this Cooperative's existence is perpetual."

Under 20-7-451, MCA, the existence of a cooperative is established when school districts enter into a contract to do so. If the contract, the interlocal agreement, is only in effect for 3 years, then the duration of the cooperative's existence is for 3 years, rather than perpetual. Thus, at the end of three (3) years, a cooperative ceases to exist and can no longer conduct business until a new contract is developed, signed, and approved.

My advice is that this cooperative agreement should be continuing unless there is a formal action to disband the cooperative. Therefore, I recommend that you eliminate the phrase "...and shall remain in effect for 3 years" from the opening statement on page 2 of the interlocal agreement, leave statement #2 under Cooperative Organization as is and continue to address a district's

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three-year membership commitment [20-7-457, MCA and ARM 10.16.3809 (d)] under the headings of Termination of Membership in Cooperative and Addition of a District to the Cooperative.

Review by the Attorney General

This paragraph does not comply with 20-7-454, MCA and 10.16.3904, ARM.

Under 20-7-454 (1), the superintendent of public instruction has final approval authority of the interlocal agreement. Please revise the statement to read:

“This agreement will be submitted to the Office of the Attorney General of the State of Montana for review and approval, in accordance with Section 20-7-453, MCA. In accordance with Section 20-7-454, MCA, the superintendent of public instruction has final approval authority and this agreement will not be effective until final approval is received and the agreement is filed with the Montana Secretary of State and County Clerk and Recorder for each county within which a participating district lies.”

In order to ensure that the cooperative employs procedures consistent with state administrative rules, the cooperative must amend its interlocal agreement. Once changes are made, you may submit the interlocal agreement to the Attorney General for approval. Upon approval from the Attorney General, you may submit the agreement to our office for final approval and filed with the county clerk and recorder of the county or counties in which the member districts are located and with the secretary of state.

If you have questions, please call me at 444-4429 or Marilyn Pearson at 444-4428.

Sincerely,

Robert Runkel  
Administrator  
Division of Special Education